IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 24959 of 2004

Between:

M/S. JAYAM AUTOMOBILES, Dr.No.76-14-226/4, Ground Floor, Grambay Road, Bhavanipuram, VIJAYAWADA, Rep. by its Proprietor, K.C. Malayalam, S/o. Kungumam, Aged about 38 Years, Krishna District.

..... PETITIONER

AND

1 The Chief Controller of Stores, APSRTC, Musheerabad

Circle, HYDERABAD.
2 The Controller of Stores, APSRTC, CUDDAPAH, Cuddapah

District.
3 The Assistant Commissioner of CT(LTU)(INT),

Secuinderabad Division, O/o. The Deputy Commissioner

(CT), Secunderabad Division, Behind Charmas, Abids,
HYDERABAD.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or Direction more particularly in the nature of Writ of Mandamus declaring the action of the Respondents namely the Controllers of Stores, APSRTC, Cuddapahj seeking to levy and collection of tax @ 12% on the sale of secondhand vehicles being sold to the petitioner in terms of Auction -Cum-tender vide No's 2409, dated 3-11-2004 as illegal, arbitrary and without authority of law and contrary to the judgment of this Hon'ble Court in 30 APSTJ Pg.217 violating Article 227 of the Constitution of India and grant such other relief or reliefs

Counsel for the Petitioner:MR.M.V.J.K.KUMAR

Counsel for the Respondent Nos.1 & 2: Mr. R.M.Reddy

Counsel for the respondent No.3 : Spl. G.P. for Commercial Taxes.

The Court made the following :

O R D E R (Per MHSA,J)

Heard the learned counsel for the petitioner, the learned counsel for respondents 1 and 2 as also the learned Standing Counsel for A.P.S.R.T.C. and the learned Special G.P. for Commercial Taxes.

Keeping in view the nature of the relief prayed for in the instant writ petition and also keeping in view that similar matter has been considered by this Court in VIJAYAKUMAR & CO. vs. CONTROLLER OF STORES, APSRTC, the instant writ petition is disposed of with the similar directions as under:

1. Delivery of the buses will be given to the petitioner subject to the fulfillment of other conditions on payment of 1 per cent of the turnover tax and furnishing bank guarantee for the balance tax (12 per cent minus 1 per cent) to the satisfaction of 3rd respondent within a period of four weeks.

2. APSRTC should file a return under the APGST Act showing the turnover in question within one month and request the assessing authority to determine the quantum of tax payable. Along with the covering letter, the APSRTC should furnish the full information in its possession as to the source of purchase of buses or chassis and bus bodies, as the case may be, and whether they were subjected to tax within the State. If the vehicle had been sold in the form of ready made bus within the State, the relevant information thereto in the

possession of the Corporation should be furnished.

3. The petitioner may submit to the first respondent in two weeks a representation highlighting the contentions in support of its claim that no tax other than the turnover tax is liable to be paid. The said representation should also be forwarded to the assessing authority along with the return and the assessing authority is bound to consider the points raised in such representation, apart from the points made out by the Corporation.

4. The assessing authority or his nominee may make note of the physical features and condition of the bus, if necessary, taking the assistance of the technical personnel of APSRTC or any other technical personnel.

5. The assessing authority should give its decision within six weeks from the date of receipt of the return together with the above information/representation. The assessing officer should inter alia keep in view the circular of the Commissioner of Commercial Taxes dated 2.2.2000. The assessing authority among other things may address himself to the question as to the classification of goods sold.

6. In the light of the order of the assessing officer which shall be communicated to the petitioner also, either the Corporation or the petitioner or both can file appeals if necessary. Till the issue is determined by the appellate authorities, the bank guarantee will be kept alive.

M.H.S.ANSARI,J

T.CH.SURYA RAO,J

AVS

DATE:18.01.2005

NOTE:

Operative portion of the

order to be communicated by

wire at party's cost.

B/O

To

1 The Chief Controller of Stores, APSRTC, Musheerabad

Circle, HYDERABAD.

2 The Controller of Stores, APSRTC, CUDDAPAH, Cuddapah

District.

3 The Assistant Commissioner of CT(LTU)(INT),

Secuinderabad Division, O/o. The Deputy Commissioner

(CT), Secunderabad Division, Behind Charmas, Abids, HYDERABAD.

4. Two C.Cs. to G.P. for Commercial Taxes, A.P. High Court Buildings, Hyderabad.

5. Two C.D. copies.